

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
PECOS DIVISION

UNITED STATES OF AMERICA,)	P-05-CR-234
Government,)	
)	
)	
VS.)	PECOS, TEXAS
)	
)	
JOSE AGUIRRE-ESTRADA,)	
Defendant.)	March 21, 2006

TRANSCRIPT OF JURY TRIAL VOLUME 2
BEFORE THE HONORABLE ROBERT JUNELL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: MR. JAMES J. MILLER, JR.
Assistant United States Attorney
2500 N. Highway 118, Suite A-200
Alpine, Texas 79830
(432) 837-7332

FOR THE DEFENDANT: MS. LIZ ROGERS
Federal Public Defender's Office
108 N. 10th Street
Alpine, Texas 79830
(432) 837-5598

MS. CHARLOTTE ALINE HARRIS
Federal Public Defender's Office
108 N. 10th Street
Alpine, Texas 79830
(432) 837-5598

1 COURT REPORTER:

MR. TODD ANDERSON, RMR, CRR
United States Court Reporter
1100 Commerce St., Rm. 1625
Dallas, Texas 75242
(214) 753-2170

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1 (March 21, 2006)

2 (Defendant present)

3 THE COURT: It's 10:00. We are outside the presence
4 of the jury.

5 Mr. Miller is here for the Government. Ms. Harris,
6 Ms. Rogers are here. And Mr. Aguirre is here.

7 The parties worked last night as well as this morning
8 on the Court's proposed instructions to the jury. And I have
9 delivered to the parties a copy of the proposed charge.

10 And down in the bottom left-hand corner of the first
11 page it should say March 21, 2006, at 9:10 a.m., is the latest
12 copy.

13 Mr. Miller, does the Government have any objections
14 to the Court's charge?

15 MR. MILLER: No Your Honor.

16 THE COURT: And, Ms. Rogers, does the -- or,
17 Ms. Harris, does the Defendant have any objections to the
18 charge?

19 MS. HARRIS: Yes, Your Honor.

20 We would object on page 6 to the instruction on
21 similar acts in keeping with our objection that that evidence
22 should not come in at the trial.

23 THE COURT: All right. I find this has to do with
24 the trial of Mr. Aguirre-Estrada in the United States District
25 Court for the Middle District of Louisiana in which he was

1 convicted in 1999 for illegal entry after deportation.

2 As I stated on the record, the Government did not
3 offer this on the issue of collateral estoppel, which there is
4 some law in other circuits about once someone has been
5 convicted of being able to raise the issue of citizenship,
6 which is the defense in this case.

7 And so it is not being offered for that part. It is
8 offered -- since the Defendant has pled guilty under 404(b),
9 the Court finds that the evidence is relevant. It does have
10 prejudice. It's exactly the same -- legally the same case, not
11 factually the same case, but legally the same case as before
12 this Court and factually to the extent that Mr. Estrada was
13 found -- I mean Mr. Aguirre was found in the United States
14 after previously having been deported.

15 The Court finds that the evidence was not cumulative
16 and it is prejudicial, but the Court finds that the probative
17 value does outweigh the prejudice.

18 I did instruct the jury that it was limited -- that
19 that evidence was not offered to prove that -- in deciding --
20 the jury could not consider this evidence in deciding whether
21 or not the Defendant committed the acts charged in the
22 indictment, illegal reentry, but it is considered for a very
23 limited purpose, that being to the intent of the Defendant and
24 to his knowledge necessary to commit the crime charged in the
25 indictment.

1 I did instruct them at the time and I instruct them
2 again in the charge.

3 I find that it was -- that the probative value does
4 outweigh the prejudice, and I respectfully overrule the
5 Defendant's objection both to the evidence as well as the
6 instruction.

7 MS. HARRIS: Yes, Your Honor.

8 THE COURT: Anything else?

9 MS. HARRIS: Yes, sir.

10 And I just want to, on that last objection, make it
11 clear that my trial objection and my objection today is
12 cumulative and Rule 403 as the Court stated in its reasons for
13 overruling it.

14 In addition, Your Honor, we object that we wish the
15 Court to include a longer definition of alienage as presented
16 in our written jury instruction. And we also requested, as
17 discussed in chambers, a theory of defense instruction. And we
18 have provided this morning a written instruction.

19 THE COURT: And is the instruction similar to the one
20 you had previously given me?

21 MS. HARRIS: No, sir.

22 THE CLERK: I gave it to Cory.

23 THE COURT: Do you have a copy? We need to make sure
24 it's filed.

25 THE CLERK: It is. I gave it to Cory.

1 THE COURT: Off the record here for a second.

2 (Discussion off the record)

3 THE COURT: All right. We're back on the record.

4 The Defendants have provided and was filed this
5 morning that the proposed -- that the following instruction be
6 given to the jury:

7 "Defense theory of the case. The Defendant has
8 presented evidence that he's a citizen of the United States.
9 Unless you find beyond a reasonable doubt that he is an alien,
10 you must acquit."

11 And then the request for alienage. The requested
12 instruction is that, "Any person born within the borders of the
13 United States is a citizen of the United States at birth
14 regardless of the citizenship of the person's parents."

15 And prosecution for illegal entry. "The Government
16 has the burden of proving beyond a reasonable doubt that
17 Mr. Aguirre-Estrada is an alien, thus the Government must
18 affirmatively prove beyond a reasonable doubt that Mr. Estrada
19 was born outside of the United States. Mr. Estrada --
20 Mr. Aguirre-Estrada has presented some evidence of birth in the
21 United States; however, it is not Mr. Aguirre-Estrada's burden
22 to prove that he was born in the United States. In other
23 words, you do not have to be convinced or even believe
24 Mr. Aguirre-Estrada is a citizen in order for you to return a
25 verdict of not guilty. At all times it remains the burden of

1 the Government to prove beyond a reasonable doubt that
2 Mr. Aguirre-Estrada is an alien. At the close of this case
3 if -- if at the close of the case you harbor a reasonable doubt
4 as to whether Mr. Aguirre is born in the United States and the
5 Government has failed to meet its burden of proof, you must
6 return a verdict of not guilty."

7 The Court's charge does have a -- the one the Court
8 has proposed does have on page 2 an instruction taken from the
9 pattern jury charge, burden of proof, which does state the
10 burden of proof is on the Government beyond a reasonable doubt.

11 In addition, the Court's charge does contain on page
12 9 the explanation of counts.

13 As to misrepresentation of citizenship, on Count One,
14 the charge states, "For you to find the Defendant guilty of
15 this crime, you must be convinced that the Defendant" -- excuse
16 me -- "that the Government has proved each of the following
17 beyond a reasonable doubt:

18 "First: That the Defendant stated that he was a
19 citizen of the United States;

20 "Second: That the Defendant was not a citizen of the
21 United States at that time; and

22 "Third: That the Defendant knew he was not a citizen
23 and deliberately made this false statement with intent to
24 disobey or disregard the law."

25 Then as to Count Two, illegal reentry following

1 deportation -- and both of these explanations are taken from
2 the pattern -- Fifth Circuit pattern jury charge -- the --
3 under Count Two, the explanation of counts, "Title 8, United
4 States Code, Section 3126(a) makes it a crime for an alien to
5 enter or to be found within the United States without consent
6 of the Attorney General or the Secretary of the Department of
7 Homeland Security to apply for readmission after being
8 deported.

9 "For you to find the Defendant guilty of this crime,
10 you must be convinced that the Government has proved each of
11 the following beyond a reasonable doubt:

12 "First: That the Defendant was an alien at the time
13 alleged in the indictment."

14 And it has three others -- second, third, and fourth,
15 which really aren't pertinent to the issue I think raised by
16 the Defendants.

17 After that, and contained in a note to the pattern
18 jury charge for illegal reentry following deportation, there is
19 a note in the pattern jury charge that suggests that if the --
20 or states that if the issue is if the Defendant is -- claims
21 that he is a United States citizen, that the Court should take
22 that portion either of the Fourteenth Amendment to the
23 Constitution or under 8 U.S.C., Section 1401, I believe --

24 MS. HARRIS: Sounds corrects.

25 THE COURT: -- is the correct section. And I think

1 that's the correct section.

2 The only definition that applied -- because it also
3 had other -- if you were born in the Aleutian Islands and you
4 had other things which doesn't apply to the facts of the case
5 and the Defendant doesn't allege in this case. The first one
6 that applied was the first one, that a person born in the
7 United States of America is a United States citizen.

8 I have stated that under the citizenship. I don't
9 mind -- I think I correctly stated the law. I want to go back
10 to the theory of the case.

11 I understand about the judge can't comment on the
12 evidence. I have declined to do so in this case and other
13 cases and follow kind of the strict -- such strict dictates of
14 the pattern jury charges in those cases where the parties can
15 find case law that say that. I did read the two cases
16 presented by the Defendants on the theory of the case.

17 In the Supreme Court case, which is -- I don't
18 remember the title -- it has to do with entrapment defense.

19 MS. HARRIS: Yes, sir.

20 THE COURT: And in that case, as I read the Supreme
21 Court of the United States in writing that case, a defendant
22 had pled not guilty but he also wanted presented that he was
23 entrapped, which seemed to be inconsistent positions. The
24 Supreme Court said no, the Defendant was entitled to present in
25 quotes the theory of his case, that being the entrapment

1 defense.

2 In United States versus Ther-Mall, Inc., which, as I
3 recall, was a restraint of trade or antitrust case, there was a
4 discussion. And the other case was Matthews versus United
5 States, which is a Supreme Court case, which said, yes, a
6 defendant was entitled to have his theory of the case, that
7 being the instructions on entrapment. The theory of the case,
8 though, does not necessarily mean that you lay out all of the
9 ways that the defense could be found -- the Defendant could be
10 found not guilty.

11 Going back to United States versus Ther-Mall, Inc.,
12 T-H-E-R--M-A-L-L, I-N-C., 373 F.3d 625, Fifth Circuit, 2004, in
13 that case, as I recall the issue was something to do with a
14 defense of restraint of trade or whether or not that was even
15 in the charge. And I think it's competitive pricing, was the
16 issue.

17 MS. HARRIS: Yes, sir.

18 THE COURT: And so the -- and as I recall in the
19 Ther-Mall case, it was affirmed -- it was affirmed. And there
20 is just kind of a general statement where they request an
21 instruction on the theory of defense is whereby some evidence
22 is reversible error not to adequately present the theory to the
23 jury.

24 In this case the issue is, from the defense's
25 standpoint, was he a citizen or not a citizen. I think I --

1 the jury has done that. I have placed an instruction.

2 I think that to clarify this, on the question of the
3 citizenship that is shown on page 10 that I could add the words
4 "You are instructed a person born in the United States of
5 America is a United States citizen regardless of whether or not
6 his parents are United States citizens." And I think that's
7 consistent with the testimony we've heard. And I think that's
8 the correct statement of the law.

9 Mr. Miller, what's the Government's position?

10 MR. MILLER: I think the -- I think it's very clear,
11 that one sentence. As a matter of fact, the defense theory is
12 basically the very first element the Government has got to
13 prove in Count Two. We have to prove -- we have the burden to
14 prove that he was an alien. The assumption right now is he is
15 a United States citizen, and we have to prove that he's an
16 alien and has no rights to be here.

17 I think it's not only redundant, but I think adding
18 any more than what has already been provided is an unfair
19 advantage [sic] to the Government.

20 The theory of the case is --

21 THE COURT: Unfair advantage to the Government?

22 MR. MILLER: In the sense that it's adding --

23 THE COURT: Advantage or disadvantage?

24 MR. MILLER: Disadvantage. Pardon me. Did I say
25 advantage?

1 THE COURT: Yeah.

2 MR. MILLER: But, Your Honor, the element of the
3 offense the Government has to prove, the very first element of
4 Count Two is that the Defendant was an alien at the time of the
5 indictment.

6 It's already presented to the jury. The Government
7 has the burden to show that he was an alien. The assumption
8 right now, he's innocent, that he is not -- right now he's not
9 committed any of these elements of any of the offenses.

10 THE COURT: Yeah, I guess -- I don't disagree with
11 what you're saying, Mr. Miller. My only point is, is that --
12 well, I'm going to leave it the way it is. I'm going to leave
13 citizenship. That is a correct statement of the law. I
14 believe I have submitted correctly the Defendant's theory of
15 the case.

16 The problem is you get into a -- start writing on
17 what everybody is editorializing within that, then I need to
18 submit -- you know, what do I need to submit to the Government.

19 There is some law. It is not raised, not requested
20 by the Government, that there is a presumption that he was not
21 a United States citizen up until October of 19 -- whatever that
22 date he pled guilty. So whatever happened, happened after
23 that. There is some law after that.

24 MS. ROGERS: He didn't plead guilty. He was found
25 guilty.

1 THE COURT: Pled or found, either one.

2 It goes -- if you read the annotations to 8 U.S.C.,
3 Section 1326, there's a number of cases that talk about a
4 presumption. The Government has not pled that or requested
5 that, and I'm not going to give it at this point in the trial.

6 But anything else, Ms. Harris? I overrule your
7 objection. And it is filed.

8 MS. HARRIS: No, Your Honor. Thank you very much.

9 THE COURT: And let me say this. In reading the
10 annotations to 1326, as well as to the 18 U.S.C., Section 911,
11 it doesn't appear to me there's been a lot -- at least if the
12 cases are there, they are not in the annotations as far as
13 instructions and jury issues and things like that. It did
14 not -- and I think -- I think -- if y'all had found something,
15 you would have cited something else other than anti-
16 competitive case and the entrapment case, if you had found
17 something.

18 I think if the Government had found something, they
19 certainly would have shared that.

20 And there are no other issues?

21 MS. HARRIS: No, Your Honor. And I don't think a lot
22 of these cases get tried. We have had this issue several times
23 and resolved them prior to trial.

24 THE COURT: Maybe this will be an opportunity for the
25 Fifth Circuit to write on it.

1 All right. Do we have all of our jurors?

2 SECURITY OFFICER: Yes, sir.

3 THE COURT: Just for the -- we are going to give 30
4 minutes a side.

5 Mr. Miller wants yours divided how? 20 and 10? 15
6 and 15?

7 MR. MILLER: 15 and 15.

8 THE COURT: You have a two-minute warning.

9 MR. MILLER: Yes, sir.

10 THE COURT: And, Ms. Rogers, you are going to argue
11 all the case for the Defendant?

12 MS. ROGERS: Yes, sir.

13 THE COURT: And have y'all gone through the exhibits,
14 and we have got all the exhibits?

15 MS. ROGERS: We have.

16 MR. MILLER: We have, Your Honor.

17 THE COURT: All right. Well, let's all rise for the
18 jury.

19 (Jury in)

20 THE COURT: Please be seated.

21 Good morning. It is 10:20. We're in the courtroom
22 with the jury.

23 And Mr. Miller is present, and Ms. Rogers and
24 Ms. Harris are present, and Mr. Aguirre Estrada is present.

25 In your seats you found a copy of the Court's

1 instructions to the jury or the Court's charge.

2 And the procedure we'll use this morning is we will
3 go through this together. I'll read it aloud. You follow
4 along. If you want to highlight something on there, feel free
5 to do so. And I'll go down to about the next-to-last page and
6 then stop. I will recognize Mr. Miller to make his opening
7 closing argument on behalf of the Government, and then
8 Ms. Rogers on behalf of Mr. Aguirre, and then I will recognize
9 Mr. Miller again to conclude.

10 The Government gets to start the closing argument and
11 end the closing argument because they have the burden of proof
12 beyond a reasonable doubt on all issues contained here or that
13 were charged by them in their indictment.

14 So if you will follow along with me.

15 "United States of America versus Jose
16 Aguirre-Estrada.

17 "Court's Instructions to the Jury.

18 "Members of the Jury:

19 "In any jury trial there are, in effect, two judges.
20 I am one of the judges; you, the jury, are the other judge. It
21 is my duty to preside over the trial and to decide what
22 evidence is proper for your consideration. I have completed
23 that responsibility. It is also my duty now, at the end of the
24 trial, to explain to you the rules of law that you must follow
25 and apply in arriving at your verdict. As I have said, you are

1 the other judge -- the judge of the facts. It will be your
2 duty to find from the evidence what the facts are.

3 "General and Specific Instructions.

4 "In performing my second duty to explain the rules of
5 law, I will first give you some general instructions which
6 apply in every case, such as instructions about burden of proof
7 and how to judge the believability of witnesses. Then I will
8 give you some specific rules of law about this particular case,
9 and finally I will explain to you the procedures you should
10 follow in your deliberations.

11 "Duty to Follow Instructions.

12 "As I mentioned before, you, as jurors, are the judge
13 of the facts. But in determining what actually happened --
14 that is, in reaching your decision as to the facts -- it is
15 your sworn duty to follow all of the rules of law as I explain
16 them to you.

17 "You have no right to disregard or give special
18 attention to any one instruction, or to question the wisdom or
19 correctness of any rule I may state to you. You must not
20 substitute or follow your own notion or opinion as to what the
21 law is or ought to be. It is your duty to apply the law as I
22 explain it to you, regardless of the consequences.

23 "It is also your duty to base your verdict solely
24 upon the evidence, without prejudice or sympathy. You are to
25 decide this case only on the evidence which has been admitted

1 into court during trial. That was the promise you made and the
2 oath you took before being accepted by the parties as jurors,
3 and they have the right to expect nothing less.

4 "Presumption of Innocence.

5 "The Defendant has been charged by the Government
6 with violations of federal law. The indictment or formal
7 charge against the Defendant is not evidence of guilt. Indeed,
8 the Defendant is presumed by the law to be innocent. The law
9 does not require the Defendant to prove his innocence or
10 produce any evidence at all.

11 "And no inference whatever may be drawn from the
12 election of the Defendant not to testify.

13 "Burden of Proof.

14 "The Government has the burden of proving the
15 Defendant guilty beyond a reasonable doubt, and if it fails to
16 do so, you must acquit the Defendant.

17 "Thus, while the Government's burden of proof is a
18 strict or heavy burden, it is not necessary that the
19 Defendant's guilt be proved beyond all possible doubt. It is
20 only required that the Government's proof exclude any
21 'reasonable doubt' concerning the Defendant's guilt.

22 "A 'reasonable doubt' is a doubt based upon reason
23 and common sense after careful and impartial consideration of
24 all the evidence in the case. Proof beyond a reasonable doubt,
25 therefore, is proof of such a convincing character that you

1 would be willing to rely and act upon it without hesitation in
2 the most important of your own affairs.

3 "Evidence -- Excluding What is Not Evidence.

4 "As I told you earlier, it is your duty to determine
5 the facts. Specifically, you must determine whether the
6 Government has proved the allegations in the -- of the
7 indictment beyond a reasonable doubt. In doing so, you must
8 consider only the evidence presented during the trial,
9 including the sworn testimony of the witnesses and the
10 exhibits.

11 "Remember that any statements, objections, or
12 arguments made by the lawyers are not evidence. The function
13 of the lawyers is to point out those things that are most
14 significant or most helpful to their side of the case, and in
15 so doing to call your attention to certain facts or inferences
16 that might otherwise escape your notice. In the final
17 analysis, however, it is your own recollection and
18 interpretation of the evidence that controls in the case. What
19 the lawyers say is not binding upon you.

20 "During the trial I sustained objections to certain
21 questions. You must disregard those questions entirely. Do
22 not speculate as to what the witness would have said if
23 permitted to answer the question. Also, do not consider any
24 testimony or other evidence which may have been stricken from
25 the record in reaching your decision. Your verdict must be

1 based solely on the legally admissible evidence and testimony.

2 "Also, do not assume from anything I may have done or
3 said during the trial that I have any opinion concerning any of
4 the issues in this case. Except for the instructions to you on
5 the law, you should disregard anything I may have said during
6 the trial in arriving at your own findings as to the facts.

7 "Evidence -- Inferences -- Direct and Circumstantial.

8 "While you should consider only the evidence, you are
9 permitted to draw such reasonable inferences from the testimony
10 and exhibits as you feel are justified in the light of common
11 experience. In other words, you may make deductions and reach
12 conclusions that reason and common sense lead you to draw from
13 the facts which have been established by the evidence.

14 "You should not be concerned about whether the
15 evidence is direct or circumstantial. 'Direct evidence' is the
16 testimony of one who asserts actual knowledge of a fact, such
17 as an eyewitness. 'Circumstantial evidence' is proof of a
18 chain of events and circumstances indicating that something is
19 or is not a fact. The law makes no distinction between the
20 weight you may give to either direct or circumstantial
21 evidence.

22 "Impeachment by Prior Inconsistencies.

23 "The testimony of a witness may be discredited by
24 showing that the witness testified falsely concerning a
25 material matter, or by evidence that at some other time the

1 witness said or did something, or failed to say or do
2 something, which is inconsistent with the testimony the witness
3 gave at this trial.

4 "Earlier statements of a witness were not admitted in
5 evidence to prove that the contents of those statements are
6 true. You may consider the earlier statements only to
7 determine whether you think they are consistent or inconsistent
8 with the trial testimony of the witness and therefore whether
9 they affect the credibility of that witness.

10 "If you believe that a witness has been discredited
11 in this manner, it is your exclusive right to give the
12 testimony of that witness whatever weight you think it
13 deserves.

14 "Credibility of witnesses.

15 "I remind you that it is your job to decide whether
16 the Government has proved the guilt of the Defendant beyond a
17 reasonable doubt. In doing so, you must consider all of the
18 evidence. This does not mean, however, that you must accept
19 all of the evidence as true or accurate.

20 "You are the sole judges of the credibility or
21 'believability' of each witness and the weight to be given each
22 witness's testimony. An important part of your job will be
23 making judgments about the testimony of the witnesses who
24 testified in this case. You should decide whether you believe
25 what each person had to say, and how important that testimony

1 was.

2 "In making that decision, I suggest that you ask
3 yourself a few questions: Did the person impress you as
4 honest? Did the witness have any particular reason not to tell
5 the truth? Did the witness have a personal interest in the
6 outcome of the case? Did the witness have any relationship
7 with either the Government or the defense? Did the witness
8 seem to have a good memory? Did the witness clearly see or
9 hear the things about which he or she testified? Did the
10 witness have the opportunity and ability to understand the
11 questions clearly and answer them directly? Did the witness's
12 testimony differ from the testimony of other witnesses? These
13 are a few considerations that will help you determine the
14 accuracy of what each witness said.

15 "Your job is to think about the testimony of each
16 witness you have heard and decide how much you believe of what
17 each witness had to say. In making up your mind and reaching a
18 verdict, do not make any decisions simply because there were
19 more witnesses on one side than on the other. Do not reach a
20 conclusion on a particular point just because there were more
21 witnesses testifying for one side on that point.

22 "Expert witness.

23 "During the trial you heard the testimony of John
24 Prewit, who has expressed opinions concerning fingerprint
25 analysis. If scientific, technical, or other specialized

1 knowledge might assist the jury in understanding the evidence
2 or in determining a fact in issue, a witness qualified by
3 knowledge, skill, experience, training, or education may
4 testify and state an opinion concerning such matters.

5 "Merely because such a witness has expressed an
6 opinion does not mean, however, that you must accept the
7 opinion. You should judge such testimony like any other
8 testimony. You may accept it or reject it, and give it as much
9 weight as you think it deserves, considering the witness's
10 education and experience, the soundness of the reasons given
11 for the opinion, and all other evidence in the case.

12 "Similar Acts.

13 "You have heard evidence of a similar act of
14 Defendant Aguirre-Estrada which may be similar to that charged
15 in the indictment, but which was committed on another occasion.
16 Specifically, you heard that Defendant Aguirre-Estrada was
17 convicted in 1999 for illegal entry after deportation. You
18 must not consider this evidence in deciding if the Defendant
19 committed the acts charged in the indictment. However, you may
20 consider this evidence for other, very limited, purposes.

21 "If you find beyond a reasonable doubt from other
22 evidence in this case that the Defendant did commit the acts
23 charged in the indictment, then you may consider evidence of
24 the similar act allegedly committed on another occasion to
25 determine:

1 "Whether the Defendant had the intent or knowledge
2 necessary to commit the crime charged in the indictment.

3 "This is the limited purpose for which any evidence
4 of other similar acts may be considered.

5 "Caution -- Consider Only Crimes Charged.

6 "You are here to decide whether the Government has
7 proved beyond a reasonable doubt that the Defendant is guilty
8 of the crimes charged in the indictment. The Defendant is not
9 on trial for any act, conduct, or offense not alleged in the
10 indictment. Nor should you be concerned with the guilt of any
11 other person or persons not on trial as a defendant in this
12 case, except as you are otherwise instructed.

13 "Caution -- Punishment Judge's Duty.

14 "If the Defendant is found guilty of the charged
15 offenses, it will be my duty to decide what the punishment will
16 be. You should not be concerned with punishment in any way.
17 It should not enter your consideration or discussion.

18 "You will note that the indictment charges that the
19 offenses were committed on or about specified dates. The
20 Government does not have to prove that the crimes were
21 committed on those exact dates, so long as the Government
22 proves beyond a reasonable doubt that the Defendant committed
23 the crimes on dates reasonably near the dates stated in the
24 indictment.

25 "Offenses Charged.

1 "The indictment is a two count indictment, which
2 reads as follows:

3 "Count One.

4 "18 U.S.C., Section 911.

5 "On or about October 27, 2005, in the Western
6 District of Texas, Defendant, Jose Aguirre-Estrada, falsely and
7 willfully did represent himself to be a citizen of the United
8 States.

9 "A violation of Title 18, United States Code, Section
10 911.

11 "Count Two.

12 "8 U.S.C., Section 1326(a) and (b)(2).

13 "On or about October 27, 2005, in the Western
14 District of Texas, Defendant, Jose Aguirre-Estrada, an alien,
15 attempted to enter, entered, or was found in the United States,
16 having previously been denied admission, excluded, deported, or
17 removed therefrom, and the Defendant had not received consent
18 of the Attorney General of the United States or the Secretary
19 of the Department of Homeland Security, the successor for this
20 function pursuant to Title 6, United States Code, Sections
21 202(3), 202(4) and 557, to reapply for admission to the United
22 States, being voluntarily in the United States unlawfully.

23 "A violation of Title 8, United States Code, Sections
24 1326(a) and (b)(2).

25 "Explanation of Counts.

1 "Count One.

2 "Misrepresentation of Citizenship.

3 "18 U.S.C., Section 911.

4 "Title 18, United States Code, Section 911, makes it
5 a crime for anyone falsely or willfully to represent oneself to
6 be a citizen of the United States.

7 "For you to find the Defendant guilty of this crime,
8 you must be convinced that the Government has proved each of
9 the following beyond a reasonable doubt:

10 "First: That the Defendant stated that he was a
11 citizen of the United States;

12 "Second: That the Defendant was not a citizen of the
13 United States at that time; and

14 "Third: That the Defendant knew he was not a citizen
15 and deliberately made this false statement with intent to
16 disobey or disregard the law.

17 "Count Two.

18 "Illegal Reentry Following Deportation.

19 "8 U.S.C., Section 1326(a).

20 "Title 8, United States Code, Section 1326(a), makes
21 it a crime for an alien to enter or to be found within the
22 United States without consent of the Attorney General or the
23 Secretary of the Department of Homeland Security to apply for
24 readmission after being deported.

25 "For you to find the Defendant guilty of this crime,

1 you must be convinced that the Government has proved each of
2 the following beyond a reasonable doubt:

3 "First: That the Defendant was an alien at the time
4 alleged in the indictment;

5 "Second: That the Defendant had previously been
6 denied admission, excluded, or removed, or deported from the
7 United States;

8 "Third: That thereafter the Defendant knowingly
9 entered, attempted to enter, or was found in the United States;
10 and

11 "Fourth: That the Defendant had not received the
12 consent of the Attorney General of the United States or the
13 Secretary of the Department of Homeland Security to apply for
14 readmission to the United States since the time of the
15 Defendant's previous deportation.

16 "Citizenship.

17 "You are instructed that a person born in the United
18 States of America is a United States citizen.

19 "'Knowingly' -- To Act.

20 "The word 'knowingly,' as that term has been used
21 from time to time in these instructions, means that the act was
22 done voluntarily and intentionally, not because of mistake or
23 accident. The purpose of adding the term knowingly is to
24 ensure that no one will be convicted for an act done because of
25 a mistake or accident or other innocent reason."

1 All right. I'm going to stop there. I'm going to
2 recognize Mr. Miller to make the opening closing statement on
3 behalf of the United States.

4 Mr. Miller?

5 MR. MILLER: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. MILLER: Your Honor, Ms. Rogers, Ms. Harris.

8 Good morning, ladies and gentlemen.

9 I would first like to start off with a timeline to
10 basically look at all the evidence and put it in perspective of
11 how things happened, the history of this case, the history of
12 this defendant's actions.

13 Folks, can you read that? Blurry? Is that any
14 better? Okay. Any better?

15 what I will do is -- Okay. Folks, first and
16 foremost, I don't think it's a contested issue that this
17 defendant was born on September 27, 1964. We have three
18 exhibits. Government Exhibit 3, 4, and 5 specifically show
19 this defendant was born in Cerocahui, Chihuahua, Mexico.

20 One of those documents, Government Exhibit 3, is the
21 official Government Mexican document showing this defendant was
22 registered and his birth certificate was registered in 1978.

23 Government Exhibit 4 shows that mom and dad
24 registered the Defendant in 1987, on August 5th, 1987. That's
25 important, because less than a month later, this defendant

1 applied for and received a CR-1 immigration status here in the
2 United States.

3 And what did he have to use to apply for that
4 citizenship status? He had to use and provide a birth
5 certificate, a Mexican birth certificate. And that Mexican
6 birth certificate the Defendant provided shows that he was born
7 in Cerocahui, Chihuahua, Mexico, on September 27, 1964, 5:00
8 a.m., just like the other two documents.

9 These documents, ladies and gentlemen, were not made
10 under the pressure of litigation or anything like that, or any
11 burdens of whether or not he was or was not a U.S. citizen. As
12 a matter of fact, he was applying for status in the United
13 States.

14 On September 1st, it states there the Defendant was
15 granted CR-1 immigration visa. However, on 7 -- July 11, 1989,
16 for the very first time the Defendant was deported. And that
17 is Government Exhibit 8.

18 And you are going to look at basically Government
19 Exhibits 8, 9, 10, and 11, the four deportations. It's going
20 to show the Defendant was arrested, order to show cause. He
21 was given his warnings about if you ever come back, an
22 immigration judge finding on particular deportations as well as
23 the actual deportation.

24 You heard from John Prewit. John Prewit came in,
25 testified, said, "I compared the fingerprints that Officer

1 Lujan did on October 27th. I compared them with every single
2 comparable fingerprint in that A-File. And without a doubt the
3 person that did the fingerprints that Officer Lujan took is one
4 and the same person, that being the Defendant."

5 Now, after his first deportation, the Defendant comes
6 in contact with Terry Luck, an officer of the court up there in
7 Midland. And he told Terry Luck that he was born in Mexico.

8 Ladies and gentlemen, the Defendant at this time
9 wasn't a little kid anymore. He was an adult. And he
10 specifically told Terry at the age of -- at this time he's 36
11 years old? 26? 26.

12 Then on January 7, 1992, the Defendant's mother
13 applies and is granted immigration visa to the U.S. That is
14 Government Exhibit 14.

15 Then four months later, the Defendant for a second
16 time is deported from the United States.

17 Then about two and a half years later, the Defendant
18 is deported a third time, in 1994. He is becoming a veteran of
19 the system.

20 Then on October 9, 1999, the Defendant is convicted
21 in Louisiana for illegal reentry after deportation. He knew --
22 he had the intent and knowledge that he was illegally in the
23 country.

24 Then between -- we heard Father Sanchez testify. He
25 was the custodian of the baptismal registry of -- I can't

1 remember -- Our Lady -- the church there in Van Horn that
2 covers basically Sierra Blanca and the surrounding environs.

3 And he stated that -- on direct examination he said,
4 yes, this child, this defendant was baptized, a person named
5 Jose Lopez Aguirre, the first time ever, ever in this history
6 of this defendant. There is no mention when he applied for
7 immigration visa or his prior deports, prior conviction. His
8 name was Jose Estrada Aguirre or Aguirre-Estrada.

9 But all of a sudden, after his conviction, there is a
10 new name. His mother is now going out trying to get him a new
11 name. It is Jose Lopez Aguirre. And she goes out sometime
12 between December 16, 2001, and March 31, 2002, if you look at
13 Defendant's Exhibit 7. The mother then gets a delayed
14 baptismal certificate.

15 Father Sanchez was asked about, "well, do you have
16 books that go all the way back to 1964?"

17 And he said, "Yes."

18 And there was no notation of a baptism of a Jose
19 Lopez Aguirre on September 27, 1964.

20 On Defendant's Exhibit 9, the mother then gets the
21 delayed baptismal certificate and then applies to the State on
22 or about February 12, 2002, for a delayed birth certificate.
23 And she applies to the State, and she testified that the State
24 denied it.

25 we heard from Freddie -- Redi Franco, pardon me.

1 Redi Franco. And what did he testify to? He testified that
2 Indian Hot Springs is in Hudspeth County, not Brewster County.
3 Hudspeth County.

4 And then the mother, after being denied by the State,
5 then goes down to Brewster County, Texas, and submits a birth
6 certificate for a person named Jose Lopez Aguirre.

7 On the 21st of July, 2003, a delayed birth
8 certificate is issued.

9 Then for the fourth time, the Defendant is deported
10 from the U.S. back to Mexico in 2004.

11 You can turn on the lights, please.

12 THE COURT: Shannon, can you turn the lights on?

13 MR. MILLER: Thank you.

14 Folks, that brings us to October 27, 2005. The
15 Defendant enters the port of entry in Presidio, Texas, from
16 Mexico, which is in the Western District of Texas. He enters
17 and is asked for his citizenship status. He doesn't make eye
18 contact or keep eye contact when Officer Agure was asking him
19 questions. He was looking straight forward.

20 He presented him the delayed birth certificate,
21 holding himself out as Jose Lopez Aguirre for the first time in
22 public. His whole life, 40 years in life, he always held
23 himself out as Jose Estrada or Jose Aguirre.

24 He knew -- he had the intent, the knowledge, that he
25 was going to come into this country. He was going to come in

1 any way possible even under a delayed birth certificate.

2 Folks, I want you to turn to page 9 and 10 of your
3 instructions, please.

4 Let's look at Count Two, first, the illegal reentry
5 after deportation. And let's just work backwards.

6 The fourth element said the Defendant had not
7 received the consent of the Attorney General or the Department
8 of Homeland Security to reapply for readmission into the United
9 States.

10 Folks, you're going to have Exhibit Number 12, the
11 certificate of nonexistence, which shows that this defendant,
12 after being deported four times, never sought or requested or
13 reapplied, said, "Hey, I'm a U.S. citizen. I should be able to
14 come back in." Never. Nothing. Certificate of nonexistence.

15 Folks, he's not new to the system, being deported
16 four times. He applied for a visa. He knows the system.

17 Thereafter, the Defendant knowingly entered or was
18 found in the United States.

19 You heard Officer Agure. Around the noon hour,
20 during shift change, the Defendant entered the checkpoint -- I
21 mean the port of entry. He was knowingly -- he was driving.
22 He knew he was coming into the United States.

23 Next is the second element. The Defendant had
24 previously been denied admission, removed, excluded, deported
25 from the United States.

1 You have Government Exhibits 8, 9, 10, and 11. Those
2 are all four deportations. It shows he's been arrested, shows
3 he's been deported. Thumbprint.

4 You heard from Agent Lujan, said, "Hey, when someone
5 is deported, you take them to the bridge, and you see them walk
6 across." And that verifies. The officer signs it. The
7 Defendant -- the deportee puts their thumbprint on it.

8 John Prewit testified, said, "Hey, all those
9 thumbprints on all those 205s match the Defendant's." He's
10 been deported.

11 Element Number 1. The Defendant was an alien at the
12 time alleged in the indictment.

13 And if you couple that with Count One, the Defendant
14 stated he was a U.S. citizen. The Defendant was not a citizen
15 of the United States at the time, and the Defendant knew he was
16 not a citizen and deliberately made his false statement with
17 intent to disobey or disregard the law.

18 Folks, when he handed over this document, he knew --
19 he knew the information on this document wasn't true, because
20 when this document was obtained, it was under a cloud of
21 suspicion. We submit to you it was surreptitiously obtained.

22 You heard mom say, "Hey, when I got that document,
23 there was no hearing. I never told them about my son being
24 deported. I never told them about my son's Mexican birth
25 certificates." It was one side of the story.

1 THE COURT: You have two minutes on your opening.

2 MR. MILLER: Thank you, Your Honor.

3 Government's Exhibit 3, 4, and 5, his application for
4 the initial time to come into the United States. These were
5 not made under any cloud of suspicion. These all show that
6 this defendant was born on September 27, 1964, in Cerocahui,
7 Chihuahua, Mexico, at 5:00 a.m.

8 As a matter of fact, one of the documents -- you
9 heard dad testify, Salvador Estrada. He testified, "Hey, I
10 signed at least one of the birth certificates."

11 If you look at the three birth certificates, there is
12 one with his signature on it. And when was this issued?
13 Exactly less than one month before the Defendant applied for
14 immigration visa.

15 why didn't mom go at that time, "Timeout, why are you
16 applying for an immigration visa? You are a United States
17 citizen"? why? Because she knew he was not a United States
18 citizen; he was not born in the United States.

19 Ladies and gentlemen, the evidence shows in this case
20 that the Defendant is guilty of both charges.

21 Thank you.

22 THE COURT: Ms. Rogers?

23 MS. ROGERS: Thank you, Your Honor.

24 Members of the jury, as I get older and I spend time
25 listening to everybody complain about being called to jury

1 duty, I want to start off and thank you. And I know as our
2 country gets more and more urban, we have less and less
3 community, and it's one of the good things about living in the
4 Big Bend area, is probably no jurors in the nation travel
5 farther to come sit in judgment of people they don't know. And
6 on behalf of my client and his family, I thank you all for
7 doing that.

8 Now, you're going to -- you've been instructed to
9 reconsider everything you heard, all the witnesses you saw, and
10 all the evidence that's been admitted, and to apply the law
11 that the Judge gives you to the facts as you determine them.

12 And Mr. Miller has just gone through the timeline to
13 show that Mr. Aguirre has been deported, and, of course, that
14 is so. But what this case falls on, what the Government's case
15 falls on, is Defendant's Exhibit Number 1. It is
16 uncontroverted that it is a valid Texas birth certificate. It
17 is uncontroverted. He did not have that in Louisiana.

18 MR. MILLER: Objection, Your Honor.

19 THE COURT: well, the jury will remember the evidence
20 that came from the trial. Again, my instructions say you're
21 not bound by what the lawyers say, but it is your recollection
22 of what the evidence is.

23 MS. ROGERS: You will follow the timeline that
24 Mr. Miller just went through and the convictions in Louisiana
25 in '99. This is issued in 2002.

1 Now, it's also clear from the Government's witnesses
2 that they don't think he should have this. They don't want him
3 to have this. And they don't like it that there is a procedure
4 in the State of Texas for people like Ms. Aguirre to get a
5 delayed birth certificate when they don't have a
6 contemporaneous registration that most of us that live in the
7 middle-class world do have.

8 It is also clear that when faced with two Mexican
9 documents that have variances in them and having to choose one,
10 there's no real answer from the Government about which one is
11 actually correct. They just say they're there and you need to
12 look at those.

13 I think you would consider even the Mexican documents
14 that are introduced here were very delayed. There is no
15 contemporaneous registration of his birth.

16 Now, Father Miguel Angel came, and he told you the
17 procedure that the church has to enter a delayed baptismal
18 record. He wasn't the priest on duty. He showed the records
19 to show it. He answered very candidly, he searched them back
20 in '64 and '65 and didn't find them, but he found them in the
21 book that we introduced and put in front of you.

22 And Mr. Miller is going to ask you to say that
23 because -- because this valid -- uncontrovertedly valid Texas
24 birth certificate says Brewster County that you have to convict
25 my client. And I tell you that's not so.

1 we introduced late yesterday Defendant's Exhibit 9
2 that the sister, Socorro, said she helped her mother fill out
3 and has her mother's signature. And you can very clearly see
4 that not only does it list Hot Springs, Texas, Hudspeth County,
5 it was notarized by Laurie Whitaker, Hudspeth County. Hudspeth
6 County. That underlines they weren't trying to defraud
7 anybody. They always said he was born in Hot Springs.

8 And I don't have the answer for that. I think maybe
9 the State of Texas is like the Federal Government when dealing
10 with New Mexico. They get it confused and think it is Mexico.

11 Indian Hot Springs is not a real community anymore.
12 It's closed. It's on public land. And some official down in
13 Texas said maybe we think you have your county wrong and
14 changed it. But it's issued, and it says Brewster County. But
15 the document suggests that the family went to Hudspeth County
16 and filled it out correctly.

17 Now, defendants, of course, have no burden to present
18 any evidence. And maybe some of you yesterday wished we should
19 have stopped at the first. I think this case could have
20 stopped when the valid birth certificate was presented. And we
21 spent a lot of time investigating and trying to find out how it
22 came about.

23 And I want to thank my client for his patience in
24 waiting almost five months for us to get to this day in court
25 that is oh so important to him and to any of us if we ever find

1 ourselves accused.

2 I think that if we were writing a television show we
3 couldn't have written it with any more hurdles involved. And,
4 of course, if I had been involved with the family or if she had
5 had access to somebody to guide her, they would have encouraged
6 her to register the birth certificate at an early age. They
7 would have encouraged her to not wait and then try to undo what
8 had taken place and the deportations that followed.

9 I think it's also fair to say that if we had a way to
10 test, if we had a way to prove absolutely where he was born,
11 that the Federal Government is not going to change their
12 position. I mean, they are never going to say they were wrong
13 in deporting him. It's not going to happen.

14 what is true in this case is the Federal
15 Government -- they just don't do it. They may take steps to
16 undo or ask the State Government to undo that birth
17 certificate, but that is not before you. And what is before
18 you is only a valid Texas birth certificate.

19 I asked Ms. Lujan yesterday when she was reviewing
20 the A-File, and you will recall I showed her a letter from
21 Homeland Security and asked if she had found that in the
22 A-File, and she did not. And the purpose of that was to show
23 that he had used both names and the Federal Government had
24 access to it.

25 I asked her to look at a document showing that

1 Mexican officials had canceled one of the birth certificates,
2 and that also was not in the A-File. But when she reviewed the
3 A-File, she did find evidence where the client had asserted a
4 U.S. birth certificate.

5 And I think it's fair to say that before they had a
6 baptismal certificate, before they had the delayed birth
7 certificate, his mother's opinion or statement didn't count for
8 anything to anybody in the family, and they understood that.

9 They said, my mother said I'm born -- I think
10 Mr. Stevenson testified that when he interviewed him in
11 Louisiana, the mother said he was born in U.S., but we don't
12 care, we don't believe you, and off you go.

13 The case is specific to October the 27th and his
14 actions that he did on that day. And I also thought it was
15 interesting that neither Ms. Lujan nor the agent at primary
16 interviewed the mom.

17 Mr. Aguirre doesn't go through the river. He doesn't
18 cut upstream like everybody knows everybody does. If he found
19 his way in the U.S., he would have had that birth certificate,
20 got a job, didn't get caught. He didn't do that. He drove
21 boldly up into primary and presented.

22 And when you look at it and review it and go over it
23 and turn it upside down, the evidence before you is that it's a
24 valid birth certificate, which gives you the right to enter
25 this country. You have a constitutional right when you are a

1 citizen of this country to enter it. And that's the
2 difference.

3 I'm going to ask you -- and I trust that people that
4 have the strength of character or care about their duties as a
5 citizen will take their oath seriously and follow the law and
6 render a true verdict in this case.

7 And the Judge has already instructed you already that
8 your verdict must be based on the legally admissible evidence
9 and testimony, not what you would have done, not what you would
10 have done in your family, not what you hope gets done in the
11 future. You have to look at squarely what is before you, and I
12 trust each of you will do that.

13 Sometimes juries say, well, you know, we see her
14 point on that. We see Mr. Miller's point on that. So we give
15 her one. We don't do that. Don't do that. Don't do that. On
16 each count on this indictment, Defendant's Exhibit 1 squarely
17 addresses it.

18 On the false claim, which is Count One, one of the
19 elements that the Defendant was not a citizen of the United
20 States at that time, October 27th, and that he knew he was not
21 a citizen.

22 And I elicited from several of the witnesses, almost
23 all of them, almost every person in the world knows where we
24 were born because they told us or we later are presented with a
25 birth certificate or we -- we all rely on what we were told.

1 we can't remember.

2 Count Two, the Government has to prove beyond a
3 reasonable doubt that he was an alien at the time it was
4 alleged in the indictment. And Lord knows he's been deported,
5 and Lord knows his position is -- their position is he should
6 be deported and he should not be a citizen. But the evidence
7 is contrary to that. And as the Judge already said to you, you
8 are instructed that a person born in the United States of
9 America is a United States citizen.

10 If this were before 1836, when Texas was not part of
11 the Union, then you can throw away that Defendant's Exhibit 1.
12 But after we joined the Union, no matter federal regulations
13 cover us and lots of aspects in our life, it doesn't take away
14 the State or the County's ability to make findings for people
15 along this border.

16 I think Mr. Prewit, Ms. Lujan, I know Officer Franco,
17 all of them acknowledge the delayed birth certificate. It is
18 not -- most of us don't do it, but it is a procedure for
19 exactly this reason, that a lot of poor people in rural
20 communities did not do the hospital way or county clerk way.

21 If you apply the law as given to you, the facts in
22 this case, if you review every document and go over every piece
23 of evidence, no matter how confusing some of it was, the only
24 correct verdict, the only true and just verdict in this case is
25 not guilty on Count One and not guilty on Count Two.

1 Thank you very much.

2 THE COURT: Mr. Miller?

3 MR. MILLER: Your Honor, could I have a sidebar?

4 (Bench Conference on the record)

5 MR. MILLER: I forgot to bring it -- you asked
6 Maricela yesterday if that document about the other one being
7 canceled --

8 THE COURT: They can't hear you. I can't hear you.

9 MR. MILLER: I'm sorry. When she asked Maricela if
10 there was a document in the A-File, and she showed you a copy,
11 then we did find it in the A-File. And I forgot to bring it to
12 Liz's attention. And when she argued it, it dawned on me, I
13 forgot to bring it to her attention. We did have it in the
14 A-File after digging through it.

15 MS. ROGERS: The canceling letter, the Mexican
16 document?

17 MR. MILLER: The letter that said it was canceled.

18 THE COURT: Okay. This is a letter that they --

19 MS. ROGERS: I had -- we had a document with -- the
20 family evidently had gone to Mexico and gotten a ruling or some
21 kind of documents said when there is two birth certificates
22 this last one is canceled.

23 THE COURT: Do you want to introduce it now? Or I
24 will introduce it as the Court's exhibit and say it was found,
25 we did find it in the file. Do you want to do that?

1 MS. HARRIS: That's fine.

2 MS. ROGERS: That's fine.

3 THE COURT: Can you give get me the document?

4 MR. MILLER: Uh-huh.

5 MS. ROGERS: Thank you.

6 (End of Bench Conference)

7 THE COURT: Back on the record.

8 why don't we make this as a Court's exhibit? Or do
9 you want to make it Defendant's exhibit?

10 MS. ROGERS: I don't have any preference, but it's in
11 the record as Defendant's Exhibit 2.

12 THE COURT: Okay.

13 MS. ROGERS: Because I showed it to her.

14 THE COURT: All right. Let's make it Defendant's
15 Exhibit 2. And we will substitute a copy for the original so
16 the Government can have the original back.

17 MS. ROGERS: Thank you.

18 THE COURT: You bet.

19 Let me -- ladies and gentlemen, yesterday Ms. Rogers
20 requested Ms. Lujan whether or not there was a particular
21 record in the A-File, which is a pretty voluminous file. And
22 the testimony is, as I recall, that she didn't believe it was.
23 She took a look, but didn't believe it was.

24 They did find the record yesterday afternoon, and it
25 was marked as Defendant's Exhibit 2, the copy that Ms. Rogers

1 had. But I didn't let it come in because it wasn't part of the
2 A-File. So the Government has found that record, and that
3 record has been marked as Defendant's Exhibit 2.

4 And as I recall, that this is a record -- and the
5 second page of it is the interpretation in English of that
6 record -- is that two of the copies of birth certificates of
7 Mr. Jose Aguirre-Estrada, one registered in 1978 and the other
8 in 1987, the second -- that would be the 1987 birth
9 certificate -- has now been canceled since he had previously
10 been registered in the 1978 birth certificate.

11 MS. ROGERS: That's correct.

12 THE COURT: Is that correct, Ms. Rogers?

13 MS. ROGERS: We will move its admission at this time.

14 THE COURT: And, Ms. Rogers, I will grant you
15 additional time if you want to make any argument about -- or
16 anything you want to tell the jury about the significance of
17 these documents, I grant you time.

18 MS. ROGERS: They can review it, what it says. Thank
19 you.

20 THE COURT: And, Mr. Miller, any objection to
21 Defendant's Exhibit 2?

22 MR. MILLER: No.

23 THE COURT: Defendant's Exhibit 2 is admitted.

24 (Defendant's Exhibit No. 2 received)

25 THE COURT: This is the original, Mrs. LaForge. And

1 what I would like to do is substitute a copy of this so the
2 Government can have its original back in its file.

3 All right. Mr. Miller, you are recognized for the
4 remainder of your closing argument.

5 MR. MILLER: Thank you, Your Honor.

6 (Pause)

7 MR. MILLER: Your Honor, I needed that exhibit. I'll
8 proceed.

9 THE COURT: Okay.

10 MR. MILLER: Folks, if you look at the instructions,
11 reasonable doubt doesn't mean beyond all doubt. It's
12 reasonable doubt. Reasonable doubt is common sense, using your
13 common sense.

14 Back in 1987, when this defendant applied for
15 immigration visa, in the document there says the reason why the
16 1987 document is canceled is because it is a repeat. It is not
17 that the information on the second 1987 birth certificate is
18 false. It's because, "Hey, you've already registered in '78,
19 so why are you reregistering in '87?" But it's the act of
20 reregistering him in '87, one month before he submitted his
21 immigration visa, mom knew at that time that, "Why are you
22 applying for immigration visa? You are a United States
23 citizen. You don't need to go through all that paperwork."

24 Let's look at the first deportation.

25 (Pause)

1 THE COURT: Mr. Miller, do you want Defendant's
2 Exhibit 2?

3 MR. MILLER: Yes.

4 (Pause)

5 THE COURT: Mr. Miller, you may have knocked the cord
6 out.

7 MR. MILLER: Yeah. I don't need that anymore. Thank
8 you, Your Honor.

9 (Pause)

10 MR. MILLER: Sorry about that, folks. Government
11 Exhibit 8, the first deportation, the Defendant wrote down he
12 resided at 4550 Spartan Drive in Odessa. He's in the process
13 of being deported.

14 Page 2 of the document, he says Salvador Estrada,
15 4550 Spartan Drive, Odessa, Texas.

16 You heard dad testify, "I was living with my wife
17 Socorro at 4550 Spartan Drive in Odessa. That's my address."

18 Mom knew he was getting deported, didn't say
19 anything, "why are you being deported? You are a United States
20 citizen."

21 MS. ROGERS: Your Honor, excuse me for interrupting,
22 but I think that argument, that's outside the record. And I
23 object to the suggestion she knew. There is no evidence of
24 that.

25 THE COURT: Well, the Government -- the jury should

1 only remember that testimony that was actually admitted into
2 the case.

3 And counsel is advised not to add anything.

4 MR. MILLER: Government Exhibit 14, the Defendant's
5 mother applies for and receives a visa. So now she's in the
6 system, and she's aware, hey, who to deal with in immigration.
7 She knows the contacts now. So there is really no ifs, ands,
8 buts in her mind how to deal with the system.

9 And then four months later, her son gets deported a
10 second time, then a third time, and then a fourth time. At no
11 time did the Defendant or anyone on his behalf say, "Hey, he
12 was born in the United States."

13 Mom testified, and she was asked, "Do you remember
14 testifying six and a half years ago in Louisiana?" And her
15 story slightly changed.

16 Asked mom about how many kids she has. She rattled
17 off nine kids. And in her application she only talks about
18 seven. Granted, one of her children, Lupito, passed away. She
19 is still missing a child.

20 Asked where they were born, she said they were all
21 born in Mexico except her oldest son, Emilio. And now she
22 claims the Defendant and their youngest daughter, Socorro, the
23 very youngest.

24 You heard Ms. Pliego testify yesterday. Does she
25 really remember? She said she was a young lady and she was --

1 she said her bathing suit was off.

2 Ladies and gentlemen, I would submit to you, she said
3 she was born in 1927. And in 1964, that would have made her 32
4 years old. I would submit to you folks that the evidence is
5 maybe it was about ten years earlier when she was about 22 that
6 she was at the Indian Hot Springs hanging out with her friends,
7 and ten years earlier, guess who was born? Emilio.

8 And what did mom state on her application? He was
9 born in Hot Springs. That's the only person she stated in her
10 application under oath in January of '92. That is the only
11 child that was born in Hot Springs.

12 You heard Officer Agure. He talked about the birth
13 certificate. The birth certificate, the piece of paper, is
14 valid. It was issued by Brewster County. There is no -- no
15 ifs, ands, buts about it. The question is, is the information
16 on it valid. How is that any different if I get information
17 and I put -- I go to the Department of Public Safety and get a
18 driver's license in the name of Robert Junell and I go walking
19 around using it? That doesn't make me Robert Junell, the
20 Judge. It doesn't.

21 The driver's license, the paper it's on is a valid
22 driver's license, but the information on it doesn't make me
23 Robert Junell. And that is what it comes down to.

24 The Defendant is deported four times, convicted at
25 least once.

1 And after that conviction, what does mom do? She
2 goes -- goes to the Catholic Church, says, "Hey, I need a
3 delayed birth certificate." Well, they take her word that she
4 baptized her son 40 years earlier, on September 27th. But
5 Father Sanchez, when he looked at those books, there was no --
6 no registry on September 27th, 1964, that a child named Jose
7 Lopez Aguirre was baptized.

8 They apply for -- they applied to the State, Hudspeth
9 County, for a birth certificate. No go. So they go down to
10 Brewster County. They slide under the radar.

11 MS. ROGERS: Your Honor, I'm sorry, that's improper
12 argument. There is no indication they slid under the radar in
13 any aspect in this case. I object.

14 THE COURT: The jury will confine its decision based
15 on the evidence introduced into evidence. And the prosecutor
16 will confine his arguments and the reasonable inferences of the
17 evidence introduced into evidence.

18 MR. MILLER: You'd get the birth certificate, write
19 to the Attorney General or Department of Homeland Security
20 saying, "Hey, listen, folks, I shouldn't have been deported,
21 and here is the reason why. I'm a United States citizen. Here
22 is my documentation."

23 Did the Defendant do this in this case? No. What
24 did he do? On October 27th, a little bit over a year after
25 being deported for the fourth time, he just happens to come

1 across the port of entry in Presidio during a lunch hour,
2 during a shift change, and was asked basic questions, "Are you
3 a United States citizen?" He presented this delayed birth
4 certificate the first time in general public, held himself out
5 as Jose Lopez Aguirre.

6 If you look at the photos, he's also changed his
7 appearance to a degree.

8 When asked questions, he didn't look Officer Agure in
9 the eye. He kept looking forward. "I hope this delay -- if
10 this delayed birth certificate gets me by, I'm home free back
11 in the United States under a different name."

12 And when asked for any other identification --
13 because Officer Agure says, "Hey, I deal with this all the
14 time. One, the card looked pretty pristine. Two, I was a
15 little suspicious because the gentleman I saw, the Defendant,
16 was much older than the date this card was issued and applied
17 for.

18 And he also -- Officer Agure says in his type of
19 words, he goes, "Hey, you may have valid paperwork, but the
20 information on it may not be correct or you may be using
21 somebody else's birth certificate."

22 Ladies and gentlemen, use your common sense, and I
23 believe you will, because both sides picked you as the jury.

24 The evidence shows in this case that the Defendant is
25 guilty beyond a reasonable doubt of both charges and a just and

1 righteous verdict is guilt as to both counts.

2 Thank you, folks.

3 THE COURT: Ladies and gentlemen, if you would go
4 back to your jury charge now on page 10, the bottom of page 10,
5 "Duty to Deliberate."

6 "Duty to Deliberate.

7 "To reach a verdict, whether it is guilty or not
8 guilty, all of you must agree. Your verdict must be unanimous
9 on each of the two counts of the indictment. Your
10 deliberations will be secret. You will never have to explain
11 your verdict to anyone.

12 "It is your duty to consult with one another and to
13 deliberate in an effort to reach an agreement if you can do so.
14 Each of you must decide the case for yourself, but only after
15 an impartial consideration of the evidence with your fellow
16 jurors. During your deliberations, do not hesitate to
17 reexamine your own opinions and change your mind if convinced
18 that you were wrong. But do not give up your honest beliefs as
19 to the weight or effect of the evidence solely because of the
20 opinion of your fellow jurors, or for the mere purpose of
21 returning a verdict.

22 "Remember, at all times, you are the judges -- judges
23 of the facts. Your duty is to decide whether the Government
24 has proved the Defendant guilty beyond a reasonable doubt.

25 "When you go to the jury room, the first thing that

1 you should do is select one of your number as your foreperson,
2 who will help to guide your deliberations and will speak for
3 you here in the courtroom.

4 "Verdict Form.

5 "A form of verdict has been prepared for your
6 convenience.

7 "The foreperson will write the unanimous answer of
8 the jury in the space provided for each count of the
9 indictment, either guilty or not guilty. At the conclusion of
10 your deliberations, the foreperson should date and sign the
11 verdict.

12 "If you need to communicate with me during your
13 deliberations, the foreperson should write the message and give
14 it to the Courtroom Security Officer. I will either reply in
15 writing or bring you back into court to answer your message."

16 If you have a note, more words is better than less
17 words. Sometimes I get, you know, one word and a question
18 mark, and I send it back with, "Exactly what is it you mean?"
19 Also, extra credit for neat handwriting and printing is
20 especially appreciated.

21 "Bear in mind that you are never to reveal to any
22 person, not even to the Court, how the jury stands, numerically
23 or otherwise, on either count of the indictment, until after
24 you have reached a unanimous verdict."

25 And you do have a verdict on each count to fill the

1 unanimous verdict. And you also have some note forms to send
2 me a note.

3 We are going to move you from this jury room, because
4 we are going to start a new trial at 1:00. We are going to
5 move you down to the jury room down the hallway.

6 Mr. Villalobos will move you through to the jury
7 room. Pick up purses, jackets, anything you may have left
8 there. And you will follow him down the hallway, and we will
9 put you in another jury room.

10 One of the first things we are going to do and -- if
11 Mr. Benavides is listening to me downstairs -- is allow you to
12 order lunch. And we'll have a menu, and we'll order lunch and
13 then bring it up here for you so you can have lunch in the jury
14 room.

15 We're now going to lose our two alternates. They
16 have been very faithful. Mr. Hernandez and Ms. Grubb have been
17 faithful jurors, but you don't get to go deliberate on the
18 verdict.

19 Did you leave -- Mr. Hernandez or Ms. Grubb, did you
20 leave anything in the jury room at all?

21 Ms. Grubb, did you? Would you get it right now and
22 come back and have a seat on that bench, and I have some
23 instructions for the two of y'all. So if you would get that.

24 Mr. Hernandez, did you leave anything in there?

25 JUROR HERNANDEZ: No, sir.

1 THE COURT: All right.

2 (Pause)

3 THE COURT: And there will be a Courtroom Security
4 officer down the hallway.

5 Mr. Hernandez, would you and Ms. Grubb mind sitting
6 right over there on that bench so we can let these jurors go
7 through?

8 And, Mr. Villalobos, if you would take the jurors.
9 Let them pick up their matters here and take them to the other
10 jury room.

11 Let's all rise for the jury as they begin their
12 deliberations.

13 (Jury out at 11:20)

14 THE COURT: And if you would just take them with you,
15 and then I'll take care of these two jurors right here. Good.

16 Ms. Grubb and Mr. Hernandez, thank you so much for
17 your service. If you would leave your notepads, we will shred
18 your notes. You are welcome to keep a copy of the jury charge
19 if you would like to have one or like to keep it here. Just
20 leave your pads, and we will take care of your notes and shred
21 your notes.

22 You are now -- you are going to be discharged from
23 the instructions I gave you about not talking about the case.
24 But I would request that you not do that until after 5:00 this
25 afternoon. Give the jury time to return a verdict.

1 And then you are entitled -- you can talk about the
2 case or not talk about the case. That is entirely up to you
3 whether you wish to do that or not.

4 So with that, you are discharged. And we appreciate
5 your service very, very much, all right?

6 JUROR GRUBB: Thank you.

7 THE COURT: Thank you. Y'all are excused.

8 All right. This Court will stand in recess pending
9 receipt of a note or a verdict from the jury.

10 I want to thank the attorneys for their advocacy in a
11 very difficult case for everyone. And I appreciate your
12 courtesy toward one another.

13 I appreciate the Government revealing to the defense
14 you had found that document. I know there's been a lot of
15 things on your mind, and so I appreciate you finding that and
16 letting the -- disclosing that to the Defendants, and your
17 courtesy to the Court as well.

18 And we will be in recess in this case pending receipt
19 of a note or a verdict from the jury.

20 All right. Thank you.

21 (Recess)

22 THE COURT: All right. Please be seated.

23 It's -- we're not quite ready. Just a second.
24 That's good. That's good.

25 It's 12:30. I have received a note from the jury

1 that they have reached a verdict.

2 Let's bring the jury in.

3 (Jury in)

4 THE COURT: Mr. Barclay, can I get you to stand?

5 Thank you.

6 (Pause)

7 THE COURT: All right. Let's be seated.

8 It's 12:30. The jury is present. I did receive a
9 note that they had reached a verdict.

10 Let the record reflect Mr. Miller is here, Ms. Rogers
11 is here, Ms. Harris is here, and Mr. Aguirre is present.

12 who speaks for the jury?

13 Mr. Love?

14 JUROR LOVE: Yes, Your Honor.

15 THE COURT: All right. And are you the jury
16 foreperson?

17 JUROR LOVE: That's true.

18 THE COURT: And has the jury reached a unanimous
19 verdict on both counts of the indictment?

20 JUROR LOVE: A verdict has been reached on both
21 counts, Your Honor.

22 THE COURT: All right. would you give the verdict
23 form to Mr. Balog, please?

24 Thank you, sir.

25 (Pause)

1 THE COURT: I'm going to hand the form back to you.
2 And I think I understand what you are trying to say. would you
3 write the entire word in there, if you would, please, sir, if
4 that is what your intent was?

5 (Pause)

6 THE COURT: Mr. Aguirre, would you and Ms. Rogers and
7 Ms. Harris please stand while Mrs. LaForge reads the jury
8 verdict?

9 THE CLERK: "In the matter of Pecos 05-CR-234, the
10 United States of America versus Jose Aguirre-Estrada."

11 The verdict is as follows:

12 "Count One.

13 "We the jury find that the Defendant is not guilty of
14 the offense charged in Count One of the indictment.

15 "Count Two.

16 "We the jury find that the Defendant is not guilty of
17 the offense charged in Count Two of the indictment."

18 Signed the 21st day of March, 2006, by the jury
19 foreperson.

20 THE COURT: Mr. Miller, do you desire to have the
21 jury polled?

22 MR. MILLER: No, Your Honor.

23 THE COURT: Ms. Rogers, do you desire to have the
24 jury polled?

25 MS. ROGERS: No, Your Honor.

1 THE COURT: I ask that it be filed with the papers in
2 this case.

3 Ladies and gentlemen, we appreciate your service so
4 much for being here this week. What I'm going to ask you to
5 do -- this is a little bit different, because we have our other
6 jury coming in right here.

7 Mr. Balog, if you would take the jury here in just a
8 second this way into my library, and I'm going to meet with you
9 for just a second and then let y'all get on your way. And we
10 appreciate very, very, very much your service.

11 You are now discharged from the instructions I gave
12 you about talking about the case. You are free to talk about
13 the case or not talk about the case. That is entirely up to
14 you, what you would like to do.

15 All right. Let's all rise.

16 And, Mr. Balog, if you would bring the jury this way.

17 (Jury out)

18 THE COURT: All right. Be seated.

19 What do I do with Mr. Aguirre?

20 MR. MILLER: He has a detainer, Your Honor.

21 THE COURT: He still has a detainer.

22 Well, Mr. Aguirre, congratulations on the verdict.
23 And there is still a hold on you from INS. So I'm sure your
24 attorneys will be working on that.

25 Mr. Miller, anything else from the Government?

1 MR. MILLER: No, Your Honor.

2 THE COURT: Ms. Rogers, anything else?

3 MS. ROGERS: No, Your Honor.

4 On the other matter, I gave the correct number to you
5 on -- Shannon has it. We had the wrong case number.

6 THE COURT: Because when I looked that one up, it was
7 somebody else, so --

8 MS. ROGERS: I called Alpine. I didn't have my file.
9 And I will follow up later.

10 May I be excused?

11 THE COURT: You may be excused.

12 Mr. Aguirre, you are remanded back because of your
13 immigration hold.

14 Thank you very much.

15 (Jury trial adjourned)

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1 I, TODD ANDERSON, United States Court Reporter for the
2 United States District Court in and for the Northern District
3 of Texas, Dallas Division, hereby certify that the above and
4 foregoing contains a true and correct transcription of the
5 proceedings in the above entitled and numbered cause.

6 WITNESS MY HAND on this 12th day of January, 2023.

7
8
9 /s/Todd Anderson

10 TODD ANDERSON, RMR, CRR
11 United States Court Reporter
12 1100 Commerce St., Rm. 1625
13 Dallas, Texas 75242
14 (214) 753-2170
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